

REMARKS/ARGUMENTS

Claims 1-3 and 5-23 are pending. Claim 1 is amended in several particulars for purposes of clarity in accordance with current Office policy, to assist the examiner and to expedite compact prosecution of this application.

Applicants have thoroughly reviewed the outstanding Office Action including the Examiner's remarks and the references cited therein. The following remarks are believed to be fully responsive to the Office Action. All the pending claims at issue are believed to be patentable over the cited references. Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the following remarks.

In addition to the arguments and amendments requested to be entered with the request for continued examination, the following arguments have been provided to append to the arguments presented previously.

Claim Rejections – 35. U.S.C. §102(b)

Claims 1-3, 5-8, 12-19 and 21 are rejected under 35. U.S.C. §102(b) as being anticipated over EP 139 289 to EI Dupont de Nemours (hereinafter referred to as "Barrett"). The Applicant respectfully traverses.

No claim is anticipated under 35 U.S.C. §102 (b) unless all of the elements are found in exactly the same situation and united in the same way in a single prior art reference. As mentioned in the **MPEP §2131**, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Every element must be literally present, arranged as in the claim.

Richardson v. Suzuki Motor Co., 868 F.2d 1226, 9 USPQ2d 1913, 1920 (CAFC 1989). The identical invention must be shown in as complete detail as is contained in the patent claim. *Id.*, AAll words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 165 USPQ 494, 496 (CCPA 1970), and MPEP 2143.03.

The claimed sealing assembly or the closure assembly of the present invention is not anticipated by Barrett as shown below.

First, Barrett fails to disclose a sealing assembly consisting of more than one part as seen in the claims of the present invention. In Barrett, there is only a single part capping described that has a groove which is fitted with two sealing rings, one of which is a slip ring. As a consequence, the fluid is pressed against the outer top of the bottle by the rotational force is coming into direct contact with the inner surface of the cap C. Additionally, it is being driven into the marginal openings between the neck portion of the bottle N and the inner wall W of the cap as there is no seal between those surfaces.

In addition, the cap C of Barrett must have a larger diameter than the neck part of the bottle as seen in figures 2, 3, and 4. Thus, it is not possible for a cap according to Barrett to be fitted onto a bottle not having such a neck part with a smaller diameter than its general cylindrical body part and still fit fully into the chamber of the rotator.

In contrast to the single part 'two-seal' cap of Barrett, the present invention comprises a three part closure assembly, including a handle part (30), a flange (40) and a bottom part (70). The three parts together with the two sealing rings make up the closure assembly of the invention. Barrett is clearly not disclosing the limitations of the claims as arranged in the claim according to MPEP §2131.

A difference of the three part solution of the present invention is the fact that it can be fitted into the inner part of the bottle. No neck part of the bottle is needed which has a smaller diameter than the cylindrical body of the bottle. Thus a better and full body support is achieved when the sealed bottle is being placed into the chamber of the rotator. This distinction is being claimed in claim 1 of the present application through the closed part of the container (i.e. bottle) and the opened part of the container are substantially equal in diameter.

The Examiner in the advisory action of paper no. 20061108 argues that the Barrett does disclose that the closed end and the open end are substantially equal in diameter. However, nothing in Barrett actually makes such a disclosure in the specification. Furthermore, if the Examiner is using the drawing to draw such a conclusion, then such a conclusion is improper.

Specifically in **MPEP §2125**, under the heading “DRAWINGS AS PRIOR ART” and under the subheading “PROPORTIONS OF FEATURES IN A DRAWING ARE NOT EVIDENCE OF ACTUAL PROPORTIONS WHEN DRAWINGS ARE NOT TO SCALE”, the MPEP states “When the reference does not disclose that the drawings are to scale and is silent as to dimensions, **arguments based on measurement of the drawing features are of little value.** However, the description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art. *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).”

Therefore, since the disclosure of Barret fails to disclose that the drawings are not to scale and is silent as to the dimension in the specification, Barrett fails to disclose the limitations as arranged in the claims.

An additional difference between Barrett and the present invention, derives from the fact that in the three part closure assembly of the present invention only surface (73) of the bottom

part of the assembly can come into contact with the fluid during operation, and not the (for stability reasons) complex shaped inner surface of the cap. Advantageously, the surface of the bottom part of the present invention can be purposely flat shaped and include tailored material. Additionally, by the assembly of the present invention, the possible gaping between the inner bottle surface and the tight sealing is being kept very small as the flat bottom part of the closure assembly directly mounts into the two-seal part (60).

Again, compared to the teaching of Barrett, there is no separate bottom part disclosed. Consequently, the feature of the sealing ring being disposed between the bottom part, the flange and the opened end of the container is neither disclosed nor anticipated by the prior art. However, that feature is responsible for the above depicted advantages of the present invention.

Yet another difference between the present invention and Barrett, is that the cap has threads to mate with the inner part of the bottleneck. However, as shown for example in claim 1, according to the present invention, the handle has threads to mate with the bottom support.

Furthermore, the flange part that is configured to mate with the opened end of the container is positioned above the seal section according to the claimed present invention. Thus, the possible gaping is being kept at a minimum. Additionally, like that, the seal is becoming even tighter with the rising pressure from the rotational force.

In contrast, according to the Barrett patent, there is a teaching of the mating flange part and the inner surface of the container always sitting below the seal section (see fig. 3 and 4). By that, the above described intrusion of fluid into that gap section is possible. In addition, no change in force is applied onto the seal when the rotational force is increased. This difference is also expressly claimed by the feature of claim 1 that the closure assembly comprises a

bottom support having threads to releasably mate with the handle wherein the flange is configured to mate with the opened end of the container and by the feature that the hold down ring and the sealing ring are disposed between the bottom support, the flange and the opened end of the container.

Additionally, Barrett does not show a handle with a male threaded bottom surface, but rather a female threaded one. In addition, again, the so called "bottom support N" which is generally not part of the cap but part of the bottle includes a male threaded top surface instead of a female one. As mentioned in MPEP §2131, the identical invention must be disclosed explicitly or inherently.

As shown above, there is no explicit disclosure, and also inherent disclosure is not pertinent in the limitations mentioned above. As mentioned above by the MPEP §2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Each of the elements are not expressly described. Inherent description is also not pertinent in this discussion, because inherency is involved only where a minor, well-known feature is lacking. Further the CCPA has added that "inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient." *In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981). As mentioned in the claim and specification of the present invention, the limitations mentioned above are not just minor points as shown by the specific and detailed explanation mentioned above.

Therefore, Barrett fails to anticipate the present invention as it fails to teach all the limitations as arranged in the claims according to 35USC§102 and MPEP§2131.

The same differences stated above apply to the subject matter of claims 12 and 19 as well as to the dependent claims, respectively.

In addition, as seen in claim 12, and as supported by the description of the present application on page 2, paragraph (0026), the closure assembly can be assembled first (independent from the container) and then the assembled arrangement can be inserted into the mouth of the container. The claim states that at least most of the closure assembly is inserted into the opened end of the sample container.

Furthermore, as clarified in claim 1, the bottom support is part of the closure assembly. Therefore, it is clear that the interpretation of the Examiner that "bottom support" is either the top of the bottle rim or the underside of the cap is an improper reason for a rejection.

Claim Rejections 35 U.S.C. §103(a)

Claims 9-11, 20 and 22 are rejected under 35 U.S.C. §103(a) as being unpatentable over Barrett in view of Hagen. The Applicants respectfully traverse.

According to MPEP 706.02(j), the following establishes a *prima facie* case of obviousness under 35 U.S.C. ' 103:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In re Vaack, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Hagen (US 6,872,358) does not teach or suggest any means like a closed finger (33) and an opened finger (32) as claimed in the present application, e.g. as seen in claim 9 and supported by fig. 3. Clearly, both fingers of the present invention can be depressed and released. Thus, they must have spring-like abilities. Claim 9 for example states that the closed finger is for locking and the open finger is for unlocking. However, Hagen does not show any such fingers in connection to the container or its sealing mechanism. In fig. 6, the recess (19) in the inner wall of the bottom part of the two-part container is only described to be intended to interlocked with the inserted test strip engagement (28). Thus, no interaction whatsoever with the top part of the two-part container is to be found in the teaching regarding the recess (19). The test strip engagement (28) is only a random insertion into the two-part container which can be changed or removed at any time and which certainly does not act in any sense of interlocking the two parts of the container. Accordingly, Hagen fails to give any hint in the direction that such closed ring/opened ring interlocking is applied to the three-part closure assembly which subsequently forms the capping and sealing of a centrifuge container.

The Examiner argues that it would have been obvious to modify Barrett with Hagen such that the handle includes a closed finger for locking and an open finger for unlocking to increase the sealing ability. The Applicants respectfully disagree.

The first point in MPEP 706.02(j) states that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability. *In*

re Dembiczak, 175 F.3d 994, 50 USPQ.2d 1614 (Fed. Cir. 1999). The showing must be “clear and particular” without broad generalized conclusory statements. *Id.* There must be specific statements showing the scope of the suggestion, teaching, or motivation to combine the prior art references. *Id.* at 1000. There must be an explanation to what specific understanding or technical principle would have suggested the combination of references. *Id.*

However, as seen here, and as shown above, the open and closed finger as claimed are not disclosed in the art or in known in the art. Furthermore, the motivation given by the Examiner, of “increase the sealing ability” is, respectfully, not a clear and particular statement but a generalized conclusory statement based on the disclosure of the present invention. Therefore, the combination of Barrett and Hagen should not be made.

Therefore, the obviousness rejection based on the combination of Barrett and Hagen should be removed.

CONCLUSION

In view of the foregoing remarks of this supplemental amendment and the previously entered amendment, Applicants respectfully submit that this application is in condition for allowance. Should the Examiner believe that anything further is necessary to place the application in even better condition for allowance, the Examiner is invited to contact the undersigned attorney at 202-861-1737 in an effort to resolve any matter still outstanding before issuing another action.

In the event this paper is not timely filed, Applicant petitions for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036 with reference to our Docket No.87334.5740.

Respectfully submitted,

BAKER & HOSTETLER LLP

A handwritten signature in black ink, appearing to read "S. S. Sahota". The signature is fluid and cursive, with the first and last names being more prominent.

S. S. Sahota
Reg. No. 47,051

Date: 12/29/2006
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5304
Telephone: 202-861-1500
Facsimile: 202-861-1783